called the "planter" to prove the contraband character of the contents of the parcel and that he had seen it in the hands—in the possession—of the person to whom he had delivered it.

The attention of the magistrate does not appear to have been drawn to this aspect of the case, so far as the appellant was concerned, but it will be noticed that he acquitted the rickshaw puller who unquestionably was in possession of the liquor if the prosecution evidence that there was no passenger in the rickshaw is accepted—though perhaps not guilty possession.

The magistrate's whole attention in the appellant's case appears to have been directed to the question of the girl being a servant or agent.

There is one passage in the grounds of judgment which is striking when compared with the evidence of the rickshaw puller and the girl that there was a woman passenger in the rickshaw and of the revenue officers that before was no woman passenger "I believed that the liquor was *either brought* or received into the house by the daughter."

Now according to the prosecution evidence the parcel was in the yard "I was in the back yard guarding Exhibit E" (the liquor) swore Revenue Officer No. 28. What then was the meaning of "either brought or received"? Was the magistrate inclined to believe the rickshaw coolie that there was a woman passenger and that the girl was that passenger? If that story which was contradicted by the Crown witnesses was true then there would be good ground for inferring that the girl was sent for the parcel and that the appellant knew what he was expecting to receive, but this story is entirely contradicted by the prosecution evidence.

The magistrate says "Another lot of liquor, of which exhibit F was one bottle, was found in the shop." Assuming that Exhibit F is one of the exhibits referred to as Exhibit A or B by the Government Analyst and which contained samsoo, there is nothing in the case to suggest that that bottle was itself dutiable liquor. I put the case down for further argument on this point and Mr. Storr who appeared for the Crown at the rehearing informed me that Exhibit F was not alleged to be illicit and was only produced in support of another charge which has nothing to do with the present appeal.

If that bottle contained dutiable liquor it might afford some evidence that the possession of the parcel which formed the subject of the charge was possession with knowledge.

In my opinion the very short possession proved in this case, unaccompanied as it was by any other circumstance, of a closed parcel is not sufficient to support the conviction.

I therefore allow the appeal, set aside the conviction, and direct the fine if paid to be refunded to the appellant.

Appeal allowed.

[APPELLATE CIVIL JURISDICTION]

HORNE, J.

April 10, 1937.

IN THE MATTER OF THE STAMP ORDINANCE (CAP. 228).

THE SINGAPORE IMPROVEMENT TRUST.... **Appellant**

v.

THE COMMISSIONER OF STAMP, S.S..... **Respondent**

[SPECIAL APPEAL No. 1 of 1937.]

Stamp—land acquisition for back lane purposes—ad valorem duty—Municipal Ordinance (Cap. 133) S. 148 (5).

An instrument executed under S. 148 (5) of the Municipal Ordinance by the Singapore Improvement Trust purporting to be a record of an acquisition of land made by the Municipal Commissioners in pursuance of an order passed by the Governor in-Council is 'a conveyance' within the meaning of, and is liable to *ad valorem* duty under, the Stamp Ordinance (Cap. 228).

Horsfall v. *Key*, (1848) 17 L.J. Exch. 266; *Garnett* v. *Inland Revenue Commissioners*, (1900) 81 L.T. 633 applied and followed.

CASE stated by the Commissioner of Stamp, Straits Settlements, under s. 40(2) of the Stamp Ordinance (Cap. 228) for determination by the High Court.

Laycock for the appellant.

Gibson, Solicitor General for the respondent.

Cur. Ad. Vult.

HORNE, J.—In this case stated the question raised is whether the instrument executed by the Singapore Improvement Trust under section 148 (5) of the Municipal Ordinance is liable to *ad valorem* duty under the Stamp Ordinance.

The argument of the appellants is that the document does not transfer anything and that by the subsection (5) it is the act of registration which transfers the estates.

For the respondent on the other hand the Solicitor-General submits that the registration merely postpones the operation of the transfer, which exists in fact, and that the document, whatever may be said as to its form, effects the transfer.

Inland Revenue Commissioners v. *Angus*, 23 Q.B.D. 579 has been cited in support of the appellants' contention. I accept the view as expressed by Lord Esher, M.R. at p. 589 where he says:—

> "The taxation is confined to the instrument whereby the property is transferred. The transfer must be made by the instrument."

This case deals with what is described as a

vesting declaration and the material part is expressed in the following terms:—

> "Now the Singapore Improvement Trust in pursuance of section 148 (5) of the Municipal Ordinance and section 2 (2) of the Singapore Improvement Ordinance hereby declare by this writing under their Common Seal that the said lands described in the Schedule hereto have been acquired by and upon the registration of this declaration together with the plan annexed hereto in the Registry of Deeds in Singapore shall vest in the Singapore Improvement Trust in connection with the said Order."

The use of the words "and upon the registration of this declaration together with the plan annexed hereto in the Registry of Deeds in Singapore shall vest in" appear to me to be redundant. The declarants are declaring something more than the subsection requires them to declare.

There remains however the declaration that the lands described in the Schedule have been acquired

Words expressed in the past tense may operate as a conveyance. In *Horsfall* v. *Key*, (1848) 17 L.J. Ex: p. 266 it was held—according to the headnote—that any instrument operating as a record of a transfer of property is a conveyance within the meaning of the Stamp Act. The instrument in that case was signed by both parties and stated that "A.B. *has sold* to C.D. all the goods stock in trade and *fixtures* in a certain shop for £50." It was argued that this instrument did not vest the property in the transferee, that it was merely a memorandum of a bygone sale which has vested the property before its execution. But Parke, B. said (at p. 268):—

> "If the parties have so expressed themselves as to make it apparent on the face of the instrument that the writing was intended to be the record of the transfer it is immaterial whether the words used be in the past tense or the present."

In *Garnett* v. *Inland Revenue Commissioners*, (1900) 81 L.T. 633, the question was whether the second of two deeds executed to give effect to a dissolution of partnership was liable to *ad valorem* duty. The deed consisted mainly of rentals and it was argued that it conveyed nothing, released nothing and that the deed was merely for recording something which had been done before. The partnership had in fact been dissolved and the only thing before the Court (Darling & Channell, JJ.) was this particular deed.

Darling, J. said at p. 637 "Well that (i.e. the dissolution) might be done without any deed at all; and it is perfectly possible that it might be done; and that a deed might afterwards be drawn up which would not in any way do it but merely record it; and in that way such a deed as that might not require an *ad valorem* stamp. But I have really to look at what was done here; and the conclusion I should come to—looking at the deed—which is the only record of what took place—is this, that when the deed was made, this arrangement for dissolution and the handing of the property to these people in the proportions agreed took place; that the deed was really that which effectuated the dissolution."

Channell, J. thought the case was covered by *Horsfall* v. *Key* (*supra*) and said at p. 638 that if the parties dissolved their partnership in 1896 and in 1897 they had executed a document "which was a separate transaction and appeared by the deed to be so that would not be liable to be stamped with an *ad valorem* stamp; but where according to the appearance of the deed it is a deed which practically effects a transaction, just as this memorandum in *Horsfall* v. *Key* effected the transaction, then it is certainly a 'release upon a sale' within the meaning of the Stamp Act."

In the matter before me the instrument certainly is the only record of what took place and being so has effected the transaction and is not simply and nothing more than a record of a past sale. It is true it has to be registered because section 145 (6) restricts the powers of the Commissioners until registration has been effected. But the title exists before registration and therefore must come into existence or be created, in the absence of proof to the contrary, by the instrument which is the only record of the transaction.

The same view is adopted in the Indian cases. In *Muhammed Hasham* v. *Crown*, I.L.R. 14 Lahore 102, the difference between a document creating a title and one merely declaring the vendee's right or ownership to land is dealt with.

Tek Chand, J. adopts the test applied by Mookerji, J. in (1910) 6 I.C. 346 *viz.* "Whether the intention of the parties was that the document should be the only repository and appropriate evidence of the transaction." "If the Court after an examination of the whole of the document finds that this is so, it must hold the document to be a conveyance. If on the other hand it merely recites a past accomplished fact the document is not a conveyance and need not be stamped."

That statement is in accord with the English cases I have already referred to. The document in question there did not create a title, it was clearly shewn that title had been created in the vendee prior thereto by an independent transaction altogether.

In connection with the instrument before me no attempt has been made to show a prior transaction passing the property i.e. creating title in the vendee. It is simply argued that there has been a sale but that the property cannot pass until registration. I cannot accept that view as being sound. Registration though impliedly, if not actually, made compulsory in this case cannot create a title. All that registration may do is to prevent until the registration the vendee doing acts that he would as vendee otherwise be entitled to do, and by subsection 4 (a) of section 145 the Commissioners are placed in a much more satisfactory position than they would be by the registration of the ordinary form of conveyance.

In my opinion the Trust by declaring they have acquired the specified lands are not merely acknowledging as a fact that a right is vested in them, but are intending to cause a change of legal relationship in respect of the specified lands. Further they are compelled by law to make this declaration and the declaration, in my view, is the only repository and the appropriate evidence of the transaction. I hold it to be a conveyance.

Solicitors for the Appellant—

Braddell Bros.

[ORIGINAL CIVIL JURISDICTION]

HOWES, AG. C. J.

April 14, 1937.

SOH AH SUAN ON BEHALF OF HIMSELF AND ALL OTHER THE BUS-OWNERS EXCEPT THE DEFENDANTS WHO HAVE HITHERTO BEEN OPERATING UNDER THE COMMON NAME OF "KEPPEL BUS CO." .....Plaintiff

vs.

1. ANG HUAT CHWEE
2. ANG AH LECK..... Defendants

[SINGAPORE SUIT No. 385 of 1936.]

Company—unregistered association of more than twenty persons—association carrying on business with acquisition of gain as object—illegality—right of members to an account.

"The Keppel Bus Company" was an association of more than twenty bus-owners carrying on business having for its object the acquisition of gain within the meaning of Section 4 (2) of the Companies Ordinance (Cap. 151). The association was not registered under that Ordinance and was therefore an illegal association. The defendants were the manager and treasurer respectively of the association. In an action by a member on behalf of himself and other members except the defendants, claiming an account of all moneys received by the defendants and other relief,

Held, that notwithstanding that the Association was illegal under the Companies Ordinance, the Court was not debarred from affording relief to the plaintiff on behalf of himself and all other members except the defendants by granting an account.

Smith for the plaintiff.

C. J. Koh for the defendants.

Cur. Ad. Vult.

HOWES, AG. C.J.—In this matter, by a consent order made by de Buriatte, J. on the 15th March 1937, it was ordered that the following preliminary point of law be tried before this Honourable Court namely:—

> "If the Keppel Bus Company referred to in Paragraph 4 of the Statement of Claim herein is an illegal association by reason of its being composed of more than twenty persons then is this Honourable Court debarred from affording relief to the plaintiff on behalf of himself and all other bus owners except the defendants, Ang Boon Siew, Ong See Neo and Tan Thean Neo who have hitherto been operating under the common name of Keppel Bus Company, by granting an account."

The plaintiff claims on behalf of himself and all other the bus-owners except the defendants, Ang Boon Siew, Ong See Neo and Tan Thean Neo who have hitherto been operating under the name of "Keppel Bus Co.":—

(a) An account of all moneys received by the defendants from the plaintiff and all other the bus-owners aforesaid and of their application thereof.
(b) Inquiry as to any property of the said "Keppel Bus Co." in the defendants' custody available for the benefit of all the said bus-owners.
(c) Administration of the assets of the said "Keppel Bus Co."
(d) Such other relief as the Court shall think just.
(e) Costs.

The defence is, that the claim is bad in law and discloses no cause of action for accounts and inquiries against the defendants, on the grounds that the Society or association of bus-owners as alleged to exist and known as "Keppel Bus Company" is composed of more than twenty persons, and that such society or association not being registered under the Societies Ordinance (Chapter 217) and or the Companies Ordinance (Chapter 151) is unlawful.

It appears to be common ground that "the Keppel Bus Company" is an association of more than twenty bus-owners, and was formed for the purpose of carrying on a business "that has for its object the acquisition of gain by the company, association, or partnership, or by individual members thereof" within Section 4(2) of the Companies Ordinance (Chapter 151); and that since it has not been registered under that Ordinance, the "Keppel Bus Company" is an illegal association. This, as above stated, is the defendants' answer to the claim.

Mr. Smith, for the plaintiff, relying on the case of *Greenberg* v. *Cooperstein* (1926) Ch. 657, argues that even if this "Company" was an illegal association by reason of its being an un-